

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 In the matter of the amendment)
4 of ARM 17.8.1201 pertaining to)
5 the definition of major source)
6 in the air quality operating)
7 permit rules)

8 **INTRODUCTION**

9 1. On May 30, 2002, I presided over and conducted the
10 public hearing held in Room 35 of the Metcalf Building,
11 1520 East Sixth Avenue, Helena, Montana, to take public
12 comment on the above-captioned matter. Notice of the hearing
13 was contained in 2002 Montana Administrative Register (MAR)
14 No. 7, MAR Notice No. 17-159, published on April 11, 2002. A
15 copy of the notice is attached to this report.

16 2. The hearing began at 1:30 p.m. and concluded at
17 1:50 p.m. A court reporter, Rosi Christensen, recorded the
18 hearing.

19 3. I announced that persons at hearing would be given
20 an opportunity to submit their data, views, or arguments
21 concerning the proposed action, either orally or in writing.
22 Written comments received at the hearing are attached to this
23 report. After the hearing, no written comments were received
24 during the public comment period.

25 4. At the hearing I identified and summarized the MAR
26 notice, stated that copies of the MAR notice were available
27 in the hearing room, read the Notice of Function of

1 Administrative Rule Review Committee as required by Mont.
2 Code Ann. § 2-4-302(7)(a), informed the persons at the
3 hearing of the rulemaking interested persons list and of the
4 opportunity to have their names placed on that list, recited
5 the authority to make the proposed rule, announced the
6 opportunity to present matters at the hearing or in writing,
7 as stated in the MAR notice, and explained the order of
8 presentation.

9 5. At the conclusion of the hearing I announced that
10 the proposed rulemaking was expected to be considered by the
11 Board at its meeting on July 26, 2002.

12 **SUMMARY OF HEARING**

13 6. Jan Brown, Rule Development Specialist, Technical
14 Support Section, Air and Waste Management Bureau, DEQ, made
15 an oral statement. Ms. Brown explained that the proposed
16 amendment would conform the definition of "major source" in
17 the State's air quality operating permit rules with the
18 revised definition adopted late in 2001 by the Environmental
19 Protection Agency. DEQ recommends adoption of the proposed
20 rule.

21 7. No other oral statements for or against the
22 proposed new rule were made at the public hearing.

23 **SUMMARY OF WRITTEN MATERIALS**

24 8. Jan Brown submitted a written statement
25 substantially the same as her oral statement.

26 9. David Rusoff, DEQ Deputy Chief Legal Counsel,
27 prepared a written review of HB 521, HB 311, and a Private

1 Property Assessment Act Checklist. With respect to HB 521,
2 the proposed rule would conform the definition in the state
3 rule with the definition in the federal regulation. The
4 proposed rule would not be more stringent than a comparable
5 federal regulation or guideline. Therefore, no further
6 HB 521 analysis is required.

7 With respect to HB 311 (the Private Property Assessment
8 Act), the State is required to assess the taking or damaging
9 implications of a proposed rule affecting the use of private
10 real property. This rulemaking involves a rule affecting the
11 use of private real property. A Private Property Assessment
12 Act Checklist was prepared, which shows that the proposed
13 rule does not have taking or damaging implications.
14 Therefore, no further assessment is required.

15 10. No other written comments were received. The
16 period to submit comments ended at 5 p.m. on June 7, 2002.

17 **PRESIDING OFFICER COMMENTS**

18 11. The Board has jurisdiction to adopt, amend, and
19 repeal rules for the administration, implementation, and
20 enforcement of the Clean Air Act of Montana. Mont. Code Ann.
21 § 75-2-111(1). The Board has specific authority to issue
22 rules relating to operating permits. Mont. Code Ann. § 75-2-
23 217.

24 12. House Bill 521 (1995), generally provides that the
25 Board may not adopt a rule that is more stringent than
26 comparable federal regulations or guidelines, unless the
27 Board makes written findings after public hearing and

1 comment. The proposed rule is not more stringent than a
2 comparable federal regulation or guideline. Therefore
3 written findings are not necessary.

4 13. House Bill 311 (1995), the Private Property
5 Assessment Act, codified as Mont. Code Ann. § 2-10-101
6 through -105, provides that a state agency must complete a
7 review and impact assessment prior to taking an action with
8 taking or damaging implications. The proposed rule affects
9 real property. A Private Property Assessment Act Checklist
10 was prepared in this matter. The proposed rule does not have
11 taking or damaging implications. Therefore, no further
12 HB 311 assessment is necessary.

13 14. The procedures required by the Montana
14 Administrative Procedure Act, including public notice,
15 hearing, and comment, have been followed.

16 15. The Board may adopt the proposed rule, or reject
17 it, or adopt the rule with revisions not exceeding the scope
18 of the public notice.

19 16. Under Mont. Code Ann. § 2-4-305(7), for any acts in
20 the rulemaking process to be valid, the Board must publish a
21 notice of adoption within six months of the date the Board
22 published the notice of proposed rulemaking in the Montana
23 Administrative Register, or by October 10, 2002.

24 Dated this _____ day of June, 2002.

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THOMAS G. BOWE
Presiding Officer